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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF WESTCHESTER

3 JOSHUA BERNSTEIN,

4 Plaintiff,

5 -against-

6 BAYROCK GROUP LLC,

7 Defendant.

8 Index No. 02579/09

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11 Martine Avenue  
White Plains, New York

Schwartz

March 5, 2010  
11:15 a.m.

15 Deposition of JULIUS R. SCHWARZ,  
16 held at the Law Offices of Gerry E. Feinberg,  
17 pursuant to court order, before Barbara  
18 Driscoll, a Notary Public of the State of  
19 New York.

23 ELLEN GRAUER COURT REPORTING CO. LLC  
24 126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
25 Ref: 92828

1     A P P E A R A N C E S:  
2

3             GERRY E. FEINBERG, ESQ.

4             Attorney for Plaintiff

5                     11 Martine Avenue

6                     White Plains, New York 10606-0134

7                             and

8             FREDERICK M. OBERLANDER, ESQ.

9                     28 Sycamore Lane

10                     PO Box 1870

11                     Montauk, New York 11954  
1213  
14             AKERMAN SENTERFITT LLP

15             Attorneys for Defendant

16                     335 Madison Avenue, Suite 2600

17                     New York, New York 10017-4636

18             BY:     MARTIN DOMB, ESQ.  
1920  
21             ALSO PRESENT:

22                     Joshua Bernstein

23                     Neil Pasmanik, Esq.  
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SCHWARZ

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A. He did.

Q. Did you draft part of it?

A. Yes.

Q. Did Mr. Kriss have an employment agreement?

A. Yes.

Q. Did you draft part of that?

A. Yes.

MR. OBERLANDER: Off the record.

(Discussion off the record.)

Q. In your capacity as executive vice president, what authority did you have to bind the company?

A. I had authority to sign for the company on transactional matters.

Q. Was there a dollar limit?

MR. DOMB: Did you finish your answer?

MR. OBERLANDER: I thought he was done.

THE WITNESS: I finished.

Q. Was there a dollar limit?

A. Under the resolution that gave me that authority, I do not believe I did. I don't believe there was a dollar limit.

Q. Beyond signing for things, what other

SCHWARZ

commitments could you make? Could you enter into contracts that called for other performance in the payment of money?

A. There were limitations. I don't remember exactly. Some of them were -- one limitation was employee compensation.

Q. What was that limitation?

A. That was in the resolution giving me the power.

Q. But was the limitation that you could hire -- you could not?

A. I could not.

Q. Could you fire?

A. I believe I could, yes.

Q. Jody Kriss, what authority did he have in the company, by which I mean the same as I just asked you?

A. I would say during his term of employment, it was the same because it was pursuant to the same resolution.

Q. So he couldn't hire?

A. I don't recall if -- I believe you needed -- yes. I believe consent was required to hire and to change compensation of employees.

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Q. Consent of who?

A. Consent would be of Mr. Arif.

Q. You earlier testified that when you came to Bayrock, that Jody Kriss was senior vice president?

A. Yes, to my knowledge.

Q. To your knowledge, did he retain that position during the course of his work there?

A. Once I started, I believe his title was director of finance.

I also believe he did sign as senior vice president. I don't recall if it was -- I believe he was senior vice president and director of finance during the entire period.

Q. Felix Sater, was Felix Sater ever employed by Bayrock Group LLC?

A. Yes.

Q. In what capacity?

A. He was tasked with trying to source deals and transactions.

Q. Did he have a title?

A. No.

Q. We can break if you need to take a phone call.

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18 BY: MARTIN DOMB, ESQ.  
1920  
21 ALSO PRESENT:

22 Joshua Bernstein

23 Brian Halberg, Esq.  
24  
25

SCHWARZ

1 was -- you said earlier today he was sent to South  
2 Africa on company business at one point in time?

3 A. Yes.

4 Q. With respect to the hiring of  
5 Mr. Bernstein, were you involved in that at all?

6 A. No.

7 Q. As far as his compensation when he was  
8 hired, who made that determination?

9 A. Everything had to be approved by  
10 Mr. Arif, but I believe he negotiated with Jody  
11 Kriss and perhaps Felix, but I am not really 100  
12 percent sure.

13 Q. There came a point in time when his  
14 salary was increased?

15 A. I believe that is correct.

16 Q. Were you involved in that  
17 determination?

18 A. I don't recall.

19 Q. Did there come a time that you learned  
20 his salary had been increased?

21 A. Yes.

22 Q. How did you learn that?

23 A. I don't recall.

24 Q. Do you recall the time when you learned  
25



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2 the office or doesn't appear or do something, that  
3 he will in fact be terminated?

4 A. It is possible. I don't recall  
5 specific instances, but it is very possible.

6 Q. Do you remember a transaction involving  
7 a family or group called Davis in California?

8 A. Yes.

9 Q. Did there ever come a time where you  
10 directed Mr. Bernstein to assist Bayrock in a  
11 transaction with the Davis people or group or  
12 family?

13 A. Yes.

14 Q. Was Mr. Bernstein, to your knowledge,  
15 promised any additional compensation if he was  
16 successful on behalf of Bayrock in doing whatever  
17 Bayrock wanted to do with the Davis group?

18 MR. DOMB: Objection to the form. It  
19 is passive, was he promised.

20 Are you asking if Mr. Schwarz promised  
21 him or if he knows?

22 Q. Do you know if yourself or anybody else  
23 on behalf of Bayrock made any representations to  
24 Mr. Bernstein about his being entitled to get  
25 additional compensation over and above his base

SCHWARZ

1 salary if he was successful in doing what Bayrock  
2 asked him do?  
3

4 A. Yes.

5 Q. What were the conversations?

6 A. I remember one conversation where I  
7 sent him to California, told him if he came back  
8 with signed documents, his bonus for that year  
9 would be \$10,000.

10 Q. Would that be \$10,000 over and above  
11 his normal year end bonus or that was going to be  
12 his year end bonus?

13 A. It may have been over and above.

14 MR. FEINBERG: Let's mark this document  
15 as Exhibit 21, an e-mail.

16 (Plaintiff's Exhibit 21, two e-mails,  
17 one dated June 12, 2007 from Julius Schwarz to  
18 Jody Kriss and Felix Sater, marked for  
19 identification, as of this date.)

20 Q. This is two e-mails, one is June 12,  
21 2007 from Julius Schwarz to Jody Kriss and Felix  
22 Sater.

23 Is this the time frame you were talking  
24 about, about his -- in June of 2007 with respect  
25 to Davis?

SCHWARZ

A. It was to memorialize an option to purchase. I don't remember the specific circumstances surrounding it. That was in general what it was about.

Q. Did Mr. Bernstein complete the second task where he was promised a bonus?

A. No. I had to end up suing the Davises and compelled arbitration and then settled the matter myself in California, I think it was, or maybe it was in Phoenix.

Q. You actually started an arbitration?

A. Yes.

Q. Who was the arbitration with?

A. Who was the arbitrator?

Q. No. Was it the American Arbitration Association, a private arbitrator?

A. I think it was the American Arbitration Association.

MR. FEINBERG: Mr. Oberlander is going to continue with our questions at this point.

MR. DOMB: I won't stop him, but I object to the switching back and forth questioning --

MR. FEINBERG: Different topics.